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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,935	12/22/2005	Peter J. Fitzpatrick	1025-002	3057
31179	7590	09/11/2007	EXAMINER	
BOTKIN & HALL, LLP 105 E. JEFFERSON BLVD. SUITE 400 SOUTH BEND, IN 46601			MEHMOOD, JENNIFER	
		ART UNIT	PAPER NUMBER	
		2612		
		MAIL DATE	DELIVERY MODE	
		09/11/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/561,935	FITZPATRICK, PETER J.
	<b>Examiner</b>	<b>Art Unit</b>
	Jennifer A. Mehmood	2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 December 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 December 2005 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/22/2005.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

***Drawings***

1. The drawings are objected to because PCT and WO numbers are on every sheet of drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The disclosure is objected to because of the following informalities: PCT and WO numbers are on every page of the specification. In addition, the specification does not contain any headings such as "background of invention", "Brief Description of Drawings", "Detailed Description of Drawings", etc...

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Regarding claims 1 and 6, the phrase "capable of" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 6, 8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt (US 3,782,475).

For claim 6, Schmidt discloses an apparatus for fighting a fire comprising a suspendible container having a perforated lower surface each of whose perforations is closed by a first heat-sensitive membrane which is capable of rupture at an elevated

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temperature (col 4, lns 35-45; col 8, lns 60-65), the container containing a fire retardant material which is released upon rupture of the membrane; the apparatus further including at least one further heat-sensitive membrane embedded in the fire retardant material above the first membrane such that a respective layer of fire retardant material lies above each membrane (Figs. 2 and 3; col 13, lns 18-60), whereby upon rupture of the first membrane the layer of fire retardant material immediately above it is released and the further membrane comes to rest upon the lower surface of the container, the layer of fire retardant material immediately above the further membrane being released only upon subsequent rupture of the further membrane (col 14, lns 1-5; col 15, lns 1-15).

For claim 8, Schmidt discloses the container is in the form of a tray having a perforated base (Fig. 1, item 2; col 13, lns 20-26).

For claim 10, Schmidt discloses the fire retardant material is a powder (col 4, lns 42-45).

#### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt (US 3,782,475) and further in view of Shibata et al. (US 4,870,942).

Schmidt discloses an elevated temperature to control a membrane, but Schmidt does not disclose a specific temperature. Shibata, however, discloses an elevated temperature of approximately 55 degrees C., which controls a valve (Fig. 1, item 20; col 5, lns 58-66). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to control a membrane at approximately 55 degrees C, so that a membrane ruptures at a consistent temperature, not unexpectedly.

***Allowable Subject Matter***

10. Claims 1-5 are allowed.
11. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
12. Claims 1-5 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
13. Claim 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### **Conclusion**

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Walden et al. (US 4,830,116), Williams (5,518,075), Baratov et al. (US 5,425,426), Stewart et al. (US 5,909,776), Banner (US 3,866,687), Cholin et al. (US 3,486,563), Purser (US 5,490,566), Lee et al. (US 4,251,579), and Walsh (US 1,169,210) disclose apparatus for extinguishing fires.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Mehmood whose telephone number is (571) 272.2976. The examiner can normally be reached on M-F from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Daniel Wu, can be reached at (571) 272.2964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jennifer A. Mehmood  
August 22, 2007

  
**BENJAMIN C. LEE**  
**PRIMARY EXAMINER**